IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6671 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MERUBHAI RANCHHODBHAI BHARWAD

Versus

COMMISSIONER OF POLICE

Appearance:

MR AKSHAY H MEHTA for Petitioner

GOVERNMENT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 01/02/2000

ORAL JUDGEMENT

Leave granted to the petitioner to amend the petition as per the draft amendment tendered today. The petitioner to carry out the amendment forthwith.

#. Heard Mr.Akshay H. Mehta, learned advocate for the

petitioner and Mr. A.J.Desai, learned AGP appearing for respondents No. 1, 2 & 3.

#. The detention order dated 26-5-99 passed by respondent No. 1 - The Commissioner of Police, Ahmedabad against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') is challenged by way of this present petition under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu under Section 9(1) of the PASA, a copy of which is produced at Annexure- C interalia indicate that two criminal cases vide C.R. No : 141 / 99 and C.R. No : 193/99 were registered against the petitioner at Vatva police station respectively. That out of said two cases, first case is pending for investigation while, the second case is pending for trial in the Court. Over and above, that two witnesses on assurance of anonymity have given statement regarding the anti social activities of the petitioner on 21-5-99 and 24-5-99 respectively, wherein, the incidents alleged to have been occurred on 5-4-99 and 20-4-99 respectively are referred to. That on the basis of the said material, the respondent No.1 - The Commissioner of Police, Ahmedabad City as the detaining authority has come to the conclusion that the petitioner / detenu is a dangerous person within the meaning of Section 2(c) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his prejudicial activities, and as such, detention order under PASA is necessary and hence the impugned order is passed.

#. The petitioner has challenged the impugned order of detention on numerous grounds. It has been contended on behalf of the petitioner at bar that the impugned order is bad in law on account of the non application of mind inasmuch as the detaining authority has failed to consider the availability of less drastic remedy like claiming of cancellation of bail granted to the petitioner in 3 registered cases though available under Section 437(5) of the CrPC and thereby, the subjective satisfaction reached by the detaining authority has been vitiated and has rendered the impugned order invalid.

#. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND OTHERS 1995 (2) GLR 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the CrPC claiming cancellation of bail

amounts to non application of mind which vitiates the subjective satisfaction, thus rendering the detention order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal No : 1056 of 1999 decided on 15-9-99 by this Court (Coram : C.K.Thakker & A.L.Dave, JJ.).

#. In the instant case, on scrutiny of papers, it appears that in last but one para in the grounds of detention, the detaining authority has observed that the petitioner / detenu was in judicial custody in respect to criminal case registered vide C.R.No : 141 / 99. However, the bail application has been moved by him. That the petitioner is likely to get bail in the said case and having got released on bail, is likely to indulge into anti social activities and hence, the impugned order is passed. The said observation on the part of the detaining authority clearly suggests that without considering the aspect of claiming of cancellation of bail as available under Section 437(5) of CrPC, the impugned order is based merely on apprehension. In view of the above, it is difficult to sustain the impugned order.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 26-5-99 passed by respondent No. 1 - The Commissioner of Police, Ahmedabad against the petitioner is hereby quashed and set aside. The petitioner - MERUBHAI RANCHHODBHAI BHARWAD is ordered to be set at liberty forthwith, if not required in any other case. Rule to the aforesaid extent is made absolute.

Date : 1-2-2000 [A.K.Trivedi, J.]

#kailash#